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**FILED**

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SECRETARY, BOARD OF  
OIL, GAS & MINING

**BEFORE THE BOARD OF OIL, GAS AND MINING**  
**DEPARTMENT OF NATURAL RESOURCES**  
**STATE OF UTAH**

UTAH CHAPTER OF THE SIERRA CLUB,  
et al, Petitioners,

vs.

UTAH DIVISION OF OIL, GAS & MINING,  
Respondents,

ALTON COAL DEVELOPMENT, LLC, and  
KANE COUNTY, UTAH

Respondent/Intervenors.

**RESPONDENT ALTON COAL  
DEVELOPMENT, LLC'S  
MEMORANDUM OF LEGAL ISSUES  
AND AUTHORITIES**

Docket No. 2009-019

Cause No. C/025/0005

Alton Coal Development, LLC ("**Alton**" or "**ACD**"), the permittee of Mine Permit No. C/025/0005 ("**Permit**"), through its attorneys, and pursuant to the schedule adopted by the parties' scheduling conference, submits its pre-hearing memorandum of legal issues and authorities addressing the legal standards for resolving each of the claims raised by petitioners Utah Chapter of the Sierra Club, Southern Utah Wilderness Alliance, Natural Resources Defense

Council, and National Park Conservation Association (collectively, “**Petitioners**”) in their Request for Agency Action, filed with the Board of Oil, Gas and Mining (“**Board**”) on November 18, 2009 as restated in Petitioners’ List of Geology/Hydrology Issues for Hearing attached to the Board’s Scheduling Order in this matter.

The purpose of this memorandum is to present the applicable rule of law and legal authority for each of the seventeen issues Petitioners will present for the Board’s adjudication. Identifying the correct rule of law is the essential starting point for the legal arguments and evidentiary presentations at hearing. For each issue, this memorandum identifies the rule applicable to the Board’s decision, when one exists, for the issue as Petitioners have framed it. When important interpretive authority exists, either in statute, rule, or guideline, Alton set forth that information as well. Also, for each issue, Alton identifies the Division’s relevant finding or technical conclusion and outlines the evidence which Alton will offer at hearing.

## **ARGUMENT**

### **A. Cultural Resources**

**FINDING:** The Division appropriately found in its required Technical Analysis that the Cultural Resources information in the permit application was adequate under the applicable rules and statutes. Final Technical Analysis 26 (October 19, 2009).

#### **1. Issue 1: Whether the Division’s determination of eligibility and effect related to cultural resources covered the entire permit area for the Coal Hollow Mine.**

Before approving any state undertaking or expending any state money, a state agency must “take into account” the undertaking’s effect on cultural and historic resources, and present that accounting of effect to the State Historic Preservation Officer (“SHPO”) for comment. Utah Code § 9-8-404(1) (LexisNexis 2009); see Utah Admin. Code R645-300-133.600 (2009) (requiring the Division’s written finding that it has accounted for these resources). In this case, the “undertaking” is the issuance of a mine permit located entirely on private land. The

accounting takes the form of the agency's written evaluation of the effect of the mine permit on the cultural and historic resources. Utah Code § 9-8-404(1)(ii).<sup>1</sup> In approving the permit, the Division may impose conditions on the operator designed to protect specific sites. Utah Admin. Code R645-300.133.600. The SHPO is not empowered to disapprove the undertaking but may register his objections with the Public Lands Policy Coordinating Office, which can initiate further analysis. Utah Code § 9-8-404(2).

This Board's rules implementing these responsibilities when approving coal mine permits require that the Permit Application contain maps and descriptive information identifying, *inter alia*, historic and cultural resources and known archaeological sites in and adjacent to the permit area. Utah Admin. Code R645-301-411.140, 141.1. The responsibility is triggered if a site is eligible for listing on the National Register of Historic Places. R645-301-411.140. The materials submitted by the applicant should also relate the efforts taken to coordinate with the SHPO and obtain that office's concurrence with the Division's determinations regarding any particular site that might be adversely affected by the operation, including plans to mitigate the adverse effects. R645-301-142.

At the hearing, Petitioners will have the burden of showing that some necessary cultural resource information regarding a resource within the permit area was omitted, or that a necessary SHPO consultation or concurrence was bypassed. Alton has moved to dismiss this claim which was not raised the Petitioners' recent motion and memorandum in support of partial summary judgment. If this motion is denied or taken under advisement, Alton, for its part, will offer the testimony of Jody Patterson, Montgomery Archaeological Consultants, who will describe the

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<sup>1</sup> Because, as explained below, the responsibility is triggered if a site is eligible for listing on the National Register of Historic Places, this written report is often referred to as the determination of "eligibility and effect."

resources identified in three separate cultural resource inventories of the permit and surrounding areas.

**2. Issue 2: Whether the division's determination of eligibility and effect related to cultural and historic resources covered any area outside the permit area approved for the Coal Hollow Mine.**

The legal standard and rule of law for determining this issue is the same as for the preceding issue. There is no dispute that Rule 641-301-411.140 and 411.141.1 impose a responsibility for resources in both the permit area and the adjacent area. For the purposes of coal mine permitting "Adjacent Area means the area outside the permit area where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed coal mining and reclamation operations. . . ." R645-100-200. As the definition indicates, context is critical to a determination of whether a resource lies in an adjacent area. For cultural and historic resources that are only likely to be adversely affected by actual surface disturbance, the adjacent area coincides with the permit area itself, because the operator must include all surface area disturbed by coal mining and reclamation operations within its permit boundaries. See R645-100-200 (defining "permit area" to include all disturbed areas.) Therefore, there is no error in omitting any resource outside the permit boundaries from a determination of eligibility and effect, or SHPO concurrence, unless it is likely to be affected by some means other than surface disturbances.

At the hearing, Petitioners will have the burden of proving that an eligible cultural or historic resource exists outside the permit area AND that it is likely to be adversely affected by coal mining and reclamation operations. Alton will present the testimony of Jody Patterson, Montgomery Archaeological Consultants, who will describe the efforts commissioned by Alton and others to identify existing resources, and to determine which, if any, are likely to be adversely affected.

3. **Issue 3: Whether the Division considered a mitigation plan for any cultural or historic resource located wholly outside the permit area.**

This Board's rules provide that the Division may require the applicant to protect a cultural or archaeological site by planning to mitigate any adverse effects. R645-301-411.144. The mitigation need not precede permit issuance so long as it is complete before the site is disturbed. Id. Requiring mitigation of any given site, either in the permit area or wholly outside, is discretionary with the Division. Id. The Division may consider planned mitigation as it makes its written finding that it has accounted for the effects of the operations on any given site. R645-300-133.600.

At the hearing, Petitioners will have the burden of proving that a site exists outside the permit area that is likely to be adversely affected by coal mining and reclamation operations, and that the Division unreasonably declined to require mitigation of adverse effects on the site. It is not sufficient to carry their burden to merely show that no site outside the permit area is associated with a mitigation plan, because this fails to establish (1) that the site is located within the "adjacent area" defined by likelihood of adverse effects resulting from mining operations; or (2) that the site is in danger of being diversely affected, or (3) that the Division could not reasonably have accounted for effects on the site without considering a mitigation plan. For its part, Alton will present testimony from Montgomery Archaeological Consultants regarding the nature of archaeological sites located outside the Permit Area, and the possibility of adverse effects from coal mining operations.

4. **Issue 4: Whether the Division was required to identify and address the effect of the proposed Coal Hollow Mine on the Panguitch National Historic District before approving the mine permit.**

The legal standard and rule of decision for this issue is the same as for Issues 1 and 2, below. No duty exists to address the Mine's effect on a cultural resource outside the permit area

unless that resource is likely to be adversely affected by coal mining and reclamation operations. See R645-100-200 (definition of "adjacent area"); R645-301-411.140, 141.1 (extending cultural resource responsibilities to the permit and adjacent areas). The rules contain a lengthy and detailed definition of "Coal mining and reclamation operations:"

"Coal Mining and Reclamation Operations" means (a) activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of Section 40-10-18 of the Act, surface coal mining and reclamation operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include all activities necessary and incidental to the reclamation of the operations, excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in-situ distillation; or retorting, leaching, or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. Provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16-2/3 percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 40-10-8 of the Act; and, provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and (b) the areas upon which the activities described under part (a) of this definition occur or where such activities disturb the natural land surface. These areas will also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

R645-100-200. The applicability of these definitions to US Highway 89 through downtown Panguitch has been extensively briefed and argued.

At the hearing, Petitioners will have the burden of proving that the Panguitch National Historic District ("PNHD") is likely to be adversely affected by any of the activities in the definition quoted above. Alton has already explained why commercial truck traffic carrying coal from the mine site on the public highway falls outside the definition. Alton has briefed this issue

in its motion for summary judgment and does not intend to present a witness on this subject at the hearing.

**B. Air Quality Issues**

**FINDING: The Division appropriately found that the Fugitive Dust Control Plan provided for specific dust control measures and a monitoring program. Because the Division could not train its inspectors in the method chosen to evaluate air opacity, it requested that the Division of Air Quality (“DAQ”) evaluate use of the method, and imposed a condition precluding mining operations until the DAQ issued its decision on an air quality permit. Final Technical Analysis 86–87.**

1. **Issue 5: Whether the Division determined that the Fugitive Dust Control Plan for the Coal Hollow Mine met the requirements of the Division’s regulations prior to approving the mine permit.**

This Board’s rules require that the Permit Application contain an air pollution control plan. R645-301-423. The plan has two required elements: (1) “An air quality monitoring program to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices proposed under R645-301-423.200 to comply with federal and Utah air quality standards:” and (2) a “plan for fugitive dust control practices” that provides for stabilization of exposed surface areas, rills, and gullies. R645-301-423.100, 423.200.

At the hearing, Petitioners will have the burden of showing that the PAP does not contain a fugitive dust control plan, or that it does not set forth a monitoring program that can provide “sufficient data” to evaluate effectiveness of control measures. For its part, Alton will show that Appendix 4-5 of the PAP contains the Fugitive Dust Control Plan (PAP, Volume 2, pp. 247-75). Alton will also show that the Division found that the plan addressed the required elements. (Final Final Technical Analysis p. 86). Alton may present the testimony of Chris McCourt, Alton’s manager and author of the dust control plan, to explain the role of EPA Method 9 in monitoring dust emissions at the site.

2. There is no statute or rule corresponding to the apparent factual allegations stated below in Petitioners' Issues 6, 7, 8, and 9. Evidence relating to this point is therefore irrelevant and should be excluded. Alton has separately explained in its pending Summary Judgment Motion and Memorandum why it is entitled to judgment as a matter of law rejecting Petitioners claims under these issues.

**Issue 6: Whether the Division of Air Quality provided the Division of Oil, Gas and Mining [with] an evaluation of the effectiveness of the Fugitive Dust Control Plan for the Coal Hollow Mine prior to the Division's approval of the mine permit.**

**Issue 7: Whether the Division of Air Quality has provided notice to the Division of Oil, Gas and Mining of receipt of a complete air permit application from ACD for the Coal Hollow Mine.**

**Issue 8: Whether the Division of Air Quality has provided notice to the Division of Oil, Gas and Mining of approval of an air permit for the Coal Hollow Mine.**

**Issue 9: Whether the Division was required to wait for the Division of Air Quality's evaluation of the Fugitive Dust Control Plan including the plan's effectiveness in addressing the quality of the night skies before approving the Coal Hollow Mine Permit.**

### **C. HYDROLOGY**

1. **Issue 10: Whether the Division's Cumulative Hydrologic Impact Assessment for the Coal Hollow Mine unlawfully fails to establish at least one material damage criterion for each water quality or quantity characteristic that the Division requires ACD to monitor during the operations and reclamation period.**

**FINDING: The Division appropriately found that "the Mining and Reclamation Plan ("MRP") proposed under the revised application has been designed to prevent damage to the hydrologic balance in the permit area and in associated off-site area." Findings ¶ 3 (October 15, 2009). It further concluded that the CHIA complies with all applicable federal and state laws. Cumulative Hydrologic Impact Assessment 4 (October 15, 2009).**

No provision of Utah's coal program requires designation of numeric material damage criteria in the CHIA to match each water quality or quantity parameter that will be monitored by



the operator. The Utah Coal Mining & Reclamation Act (“UCMRA”) requires, as a condition of approving a permit, that the Division must prepare and use a CHIA to determine the proposed mining’s effect on hydrological resources in connection with “all anticipated mining” that will occur within any hydrologic unit outside the permit area. Utah Code § 40-10-11(2)(c). The CHIA is based on a statement of Probable Hydrologic Consequences prepared by the applicant. § 40-10-10(2)(c). This Board’s rules set the legal standard for an adequate CHIA: the document shall be “sufficient to determine, for purposes of permit approval whether the proposed coal mining and reclamation operation has been designed to prevent material damage to the hydrologic balance outside the permit area.” Utah Admin. Code R645-301-729.100.<sup>2</sup>

A CHIA is a technical tool, not an enforcement tool, whose fundamental purpose is to facilitate and evaluate design of the mine, and its content is dictated by that goal. See Ohio River Valley Env’tl Coalition v. Callaghan, 133 F. Supp 2d 442, 445 (S.D.W.V. 2001) (“Noncompliance with design requirements and regulatory standards may be demonstrated by reference to the CHIA, but what dictates the content and supporting information of a CHIA is the design function, not its utility as an enforcement tool.”). A CHIA need not establish quantitative material damage limits to be deemed adequate because the precise nature of any criteria that might be employed to detect material damage limits lies within the discretion of the agency. Id.

The Office of Surface Mining, in promulgating rules for approval of state programs, took a view similar to that of the Callaghan court. Responding to comments urging that an agency should establish guidelines in its CHIA to determine whether material damage was occurring

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<sup>2</sup> Hydrologic balance means “the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.” R645-100-200.

from the proposed operation, OSM recognized that agencies must retain flexibility to deal with site conditions, and declined.

OSM agrees that the regulatory authorities should establish criteria to measure material damage for the purposes of the CHIAs. However, because the gauges for measuring material damage may vary from area to area and from operation to operation, OSM has not established fixed criteria, except for those established under §§ 816.42 and 817.42 related to compliance with water-quality standards and effluent limitations.

Office of Surface Mining, Permanent Regulatory Program Hydrology Permitting and Performance Standards, 48 Fed. Reg. 43,956, 43,973 (Sep. 26, 1983). A Utah rule substantially similar to 30 C.F.R. §§ 816.42 and 817.42 requires that *discharges* of water from areas disturbed by the mine must meet applicable water-quality standards, but does not purport to regulate mining operations on the basis of water-quality measurements in any stream, aquifer, or other hydrologic unit. Utah Admin. Code R645-301-751.

In summary, nowhere do the statute and rules governing Utah's Program explicitly require that the CHIA contain a fixed set of material damage criteria matching the hydrology monitoring measurements, and the authorities from West Virginia and the federal program just cited provide persuasive reasons not to construe them to imply such a requirement.<sup>3</sup> Therefore, even if Petitioner proved at the hearing that the CHIA's material damage criteria for the Coal Hollow Project do not align with each flow or quality parameter measured in the operations plan, the Board would be without a legal basis to rule in Petitioners' favor on that issue, and would be unable to grant the requested relief.

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<sup>3</sup> Alton recognizes that neither the West Virginia nor OSM rules are directly applicable. See Bragg v. W. Va. Coal Ass'n, 248 F.3d 275, 288–89 (4th Cir. 2001) (Recognizing that once the Secretary of the Interior approves a state regulatory program, the provisions of the state program are exclusive, and the federal law and regulations “drop out.”). Because the state and federal regulatory provisions are nearly identical, the Board may be persuaded by OSM's reasoning on the subject.

At the hearing, Petitioners will have the burden of showing that the CHIA fails to show that the mine has been designed to prevent material damage. Alton expects that Petitioners will attempt to skirt their burden relating to mine design by offering the testimony of Charles Norris who may opine that numeric criteria imposing enforcement actions on an operator are essential elements of a CHIA. For its part, Alton will offer the testimony of Erik C. Petersen, Petersen Hydrologic, LLC, who will identify and explain the probable hydrologic consequences of the proposed mine operations. Alton will also offer the testimony of mining engineer Chris McCourt, Alton Coal Development, LLC, who will describe how he designed the mining and reclamation operations at the Coal Hollow Mine to minimize or avoid the probable hydrologic consequences identified by Mr. Petersen.

2. **Issue 11: Whether the Division's Cumulative Hydrologic Impact Assessment for the Coal Hollow Mine unlawfully fails to designate the applicable Utah water quality standard for total dissolved solids (a maximum concentration of 1,200 milligrams per liter) as the material damage criterion for surface water outside the permit area.**

**FINDING: The Division appropriately found that "the Mining and Reclamation Plan ("MRP") proposed under the revised application has been designed to prevent damage to the hydrologic balance in the permit area and in associated off-site area." Findings ¶ 3 (October 15, 2009). It further concluded that the CHIA complies with all applicable federal and state laws. Cumulative Hydrologic Impact Assessment 4 (October 15, 2009).**

The Utah Coal Program's rule adopting the Utah Water Quality Standards<sup>4</sup> of the Department of Environmental Quality ("DEQ") regulates "*discharges of water* from areas disturbed by coal mining and reclamation operations." Utah Admin. Code R645-301-751 (emphasis supplied). Three important distinctions prevent applying this rule, as Petitioners wish, to be a material damage criterion for surface waters outside the permit area. First, the rule applies to discharges of water from the disturbed area, while Petitioners demand its applicability to

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<sup>4</sup> The water quality standards at issue are promulgated by the Utah Department of Environmental Quality under the authority of the Clean Water Act ("CWA").

bodies of water outside the disturbed area located some distance from the discharges, and possibly affected by non-mining impacts. Second, Unlike the CHIA, which addresses *design* standards for the mine, this rule articulates a *performance* standard that the operator must meet throughout the life of mining and reclamation operations. OSM has rejected such an attempt to press the CHIA's design standards into service to enforce water quality: "The SMCRA mandate that proposed mines be designed to prevent material damage to the hydrologic balance is not a vehicle for using SMCRA to enforce CWA standards." Office of Surface Mining, West Virginia Regulatory Program, 73 Fed. Reg. 78,970, 78,977 (Dec. 24, 2008).

Third, exceedance of water quality standards is a separate issue that may, or may not, also indicate material damage to the hydrologic balance. OSM has flatly rejected the argument (made in comments on a change to West Virginia's regulations) that CWA water quality standards are enforceable under SMCRA's mandate to prevent material damage to the hydrologic balance. The problem with that approach, OSM explains, is that the water quality standards present no particular reason to also conclude that the hydrologic balance is being materially damaged:

OSM disagrees with the statement that effluent limitations and water quality standards constitute predetermined material damage criteria. [The commenting party] is under the misguided impression that 30 CFR 816.42 and 817.42 establish fixed material damage criteria for coal mining operations. While the plain language of these regulations require discharges of water from mining operations to be in compliance with applicable State and Federal water quality laws and regulations as well as the EPA effluent limitations for coal mining operations, there is no assertion that discharges that violate such laws and regulations somehow automatically constitute material damage to the hydrologic balance. *Obviously discharges that do not comply with either the effluent limitations or water quality standards should be considered performance standard violations by the regulatory agency, but whether such discharges constitute material damage to the hydrologic balance is another issue entirely.*

Id. at 78,977–78 (emphasis supplied). Alton suggests that OSM's well-reasoned rejection of an identical claim asserted against an identical federal regulation should persuade the Board that,

although Utah water quality standards are important and enforceable performance standards for discharges from the Coal Hollow project, there is no legal requirement that these any of these standards appear in the CHIA as criteria for material damage to surface water bodies.

At the hearing, Petitioners will have the burden of proving that the mine has not been designed to prevent material damage to the hydrologic balance in surface waters beyond the permit area. Alton will present the testimony of Messrs. Petersen and McCourt as described in Issue 10, above.

3. **Issue 12: Whether ACD's Hydrologic Monitoring Plans are unlawfully incomplete because they fail to describe how the monitoring data that ACD will collect may be used to determine the impacts of the Coal Hollow Mine upon the hydrologic balance.**

**FINDING: The Division appropriately found that the hydrologic information provided by Alton meets the requirements of the Utah Coal Rules. Final Technical Analysis 116.**

This Board's rules require that the operations plan submitted with the PAP set forth specific plans for monitoring the quality and quantity of surface and groundwater resources.

The permit application will include a ground-water monitoring plan based upon the PHC determination required under R645-301-728 and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan will provide for the monitoring of parameters that relate to the suitability of the ground water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance set forth in R645-301-731. It will identify the quantity and quality parameters to be monitored, sampling frequency and site locations. It will describe how these data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron, total manganese and water levels will be monitored.

R645-301-731.211. A similar requirement applies to surface-water monitoring. See R645-301-731.220 to 731.224.

At the hearing, Petitioners will have the burden of proving that the operations plan provided in the PAP does not provide information of how monitoring of surface and groundwater might be employed to detect the operations' effects on the hydrologic balance. Alton will present the testimony of Mr. Petersen, the author of the monitoring plans, who will describe the role of monitoring data in assuring that the hydrologic balance is protected.

4. **Issue 13: Whether ACD's Hydrologic Monitoring Plan is unlawfully incomplete because it fails to include remedial measures that ACD proposes to take if monitoring data show trends toward one or more material damage criteria.**

**FINDING: The Division appropriately found that the hydrologic information provided by Alton meets the requirements of the Utah Coal Rules. Final Technical Analysis 116.**

This Board's rules spell out the range of remedial measures that may be required of an operator to protect water resources. See R645-301-731. The plan should identify remedial measures designed to (1) avoid acid drainage, (2) prevent additional contributions of suspended solids to streamflows, (3) provide water treatment facilities when needed, and (4) control drainage. Also required are measures to (5) protect or replace appropriated water rights, and (6) address any potential adverse consequences identified in the PHC determination. Id. The Division *may require* additional preventative, remedial, or monitoring measures it deems necessary to prevent material damage to the hydrologic balance in the adjacent area. Id. No specific provision of the rules requires the operator to specify remedial measures based upon trends in the monitoring data.


At the hearing, Petitioners will have the burden of proving that the Division acted arbitrarily by not requiring remedial measures triggered by monitoring measurements trending toward, but not reaching, any material damage criterion. As with Issue 11, Alton will present the testimony of Erik Petersen who will explain how the monitoring and operation plans are

structured to detect and prevent material damage to the hydrologic balance.

### CONCLUSION

For each issue raised by Petitioners in the April 28-30 hearing, Alton has identified the legal authority and rule of law necessary to determine the merits of the claim. Alton respectfully requests that based on these legal standard the Board affirm the Division decision to approve the permit for the Coal Hollow Mine.

SUBMITTED this 26<sup>th</sup> day of April, 2010.



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**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_ day of April, 2010, I mailed a true and correct copy of the foregoing **RESPONDENT ALTON COAL DEVELOPMENT, LLC'S MEMORANDUM OF LEGAL ISSUES AND AUTHORITIES** via e-mail and United States mail, postage prepaid, to the following:

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